Dear Lewis

THE FOOD (AMENDMENT) (EU EXIT) REGULATIONS 2019
EU EXIT LEGISLATION – SCRUTINY OF THE NOTIFICATION

Thank you for your letter of 21 February in which you listed questions from the Committee to inform the members’ scrutiny of the notification. I have set out the questions with responses below.

Given that the notification states “For the most part, the key consumer protection elements of this Regulation remain intact”, can the Scottish Government outline which elements do not remain intact?

Given that the notification states “For the most part, the key consumer protection elements of this Regulation remain intact”, can the Scottish Government outline which elements do not remain intact?

The effect of this fixing Statutory Instrument (SI) is to maintain the level of consumer protection in what will become the retained EU Regulation, and the policy elements of the EU law here remain intact. However, some modification and removal of parts of the text is necessary to reflect the change from an EU wide application to a UK context. For example, in making national measures in respect of food information matters it will no longer be necessary to notify and seek approval from the Commission and other EU Member States.
How are the Scottish and UK Governments responding to stakeholder concerns that they will need a transition period for organisations to understand what the post-EU landscape looks like, and to be able to modify existing labels, and use up existing stock?

There are no modifications to EU law contained in this specific fixing instrument which would necessitate any modification of the existing labelling requirements for businesses and therefore potentially require transitional arrangements. Some aspects of food information to consumer labelling will require consequential changes as a result of the UK no longer being part of the EU. However, a separate instrument is being drafted which will contain the necessary changes here and the notification and recommendations to the Committee, including any transitional proposals, will be dealt with in that notification.

It is not possible to provide a view on whether the Scottish Government’s categorisation of this notification is appropriate without knowing whether in fact the SI will transfer powers to legislate. The notification and covering letter are inconsistent in relation to whether the proposed SI will transfer powers. The covering letter (third-last paragraph) says:

“this SI [makes] the necessary modifications to… transfer powers to allow future amendment to parts of the EU law where such modifications are currently permitted.”

However, the notification itself (under “Impact on devolved areas”) says:

“This SI does not provide for any transfer of powers or functions.”

Which is it? If powers are transferring, please identify which powers.

There are no new powers being transferred in this SI but some existing powers are being reframed in a UK context. Currently, with the agreement of the Commission and other EU Member States it is possible for a Member States to introduce national measures to apply additional food information requirements. An example of where this has been done is the requirement for the name of the food to be displayed on a nearby label or a ticket where it is sold loose e.g. from a baker’s shelf. This fixing SI makes clear that Scottish Ministers will continue to have this power by amending the retained EU law. It was the maintenance of these provisions which was being alluded to in the referenced text.

If the SI “does not provide for any transfer of powers or functions” how will such labelling requirements be enforced?

The enforcement powers in respect of the food information requirements contained within the retained EU legislation will remain available in the Food Information (Scotland) Regulations 2014 (as amended).
I hope this response is helpful.

JOE FITZPATRICK